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**FEB 14 2006**

**OFFICE OF PETITIONS**

In re Application of  
Tonar et al.  
Application No. 10/085,434  
Filed: February 28, 2002  
Attorney Docket No. GEN-001323C3

**DECISION ON PETITION**

This is a decision on the "Petition To Withdraw Holding Of Abandonment Based Upon Failure To Receive Office Action Under 37 C.F.R. § 1.181," filed on April 1, 2005, and resubmitted on January 23, 2006. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience to petitioner.

On June 2, 2004, the Office mailed a final Office action, which set a three-month shortened statutory period for reply. In the absence of a timely filed response, the application became abandoned on September 3, 2004. On February 8, 2005, the Office mailed a Notice of Abandonment.

In the present petition, petitioner requested that the Office withdraw the holding of abandonment due to non-receipt of the final Office action mailed on June 2, 2004. The practitioner attested that a search of the file jacket and docket records indicated that the original final Office action was not received. In support of his assertion, the practitioner submitted a print out of the docket record for this application, indicating that no entry exists for the Office action. The practitioner asserted that no reply period existed in the docketing system because the final Office action, which included allowed claims, was never received. The practitioner further explained that the lack of any such data in the section entitled "Reminder List for this Case" indicated that the Office action was not received.

A review of the record indicates no irregularity in the mailing of the final Office action of June 2, 2004, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where

the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three-month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action.

The showing of record is insufficient to warrant withdrawal of the holding of abandonment at this time. Unfortunately, it is not readily apparent from the documentary evidence submitted on petition that the Office action was not received. The print out of the docket record submitted by the practitioner does not contain any entries of any replies docketed in this application. Therefore, the practitioner should provide additional documentary evidence to establish non-receipt of the final Office action, such as a copy of the outside of the file jacket maintained by the practitioner. Additionally, the practitioner may wish to further explain the system for docketing USPTO communications.

The petition to withdraw the holding of abandonment is **dismissed**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." Extensions of time are permitted under 37 CFR 1.136(a). In the alternative, petitioner may wish to file a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Senior Petitions Attorney Christina Tartera Donnell**:

By mail:                      Mail Stop Petition  
                                    Commissioner for Patents  
                                    P.O. Box 1450  
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By FAX:                      (571) 273-8300  
                                    Attn: Office of Petitions

By hand:                     Customer Service Window  
                                    Randolph Building  
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Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

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